



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

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Jennifer Warner
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MEMORANDUM

DATE: August 20, 2015

TO: Family Division Judges
Court Administrators
Probate and Juvenile Registers

FROM: Jodi Latuszek, Management Analyst

RE: SCAO Communication 2015-02
[Administrative File No. 2014-37](#), Court Rule Changes Regarding Removals

On May 27, 2015, the Court adopted amendments of MCR 3.963, 3.966, and 3.974 to clarify removal and placement change procedures at various stages of a child protective proceeding. Application of these rules will provide for more consistent practice around the state and ensure consistent data entry for Permanency Indicators Reporting. The changes are effective September 1, 2015.

Background

Permanency Indicators Reporting (PIR) data from 2013 revealed that courts throughout Michigan followed different procedures in conducting hearings for children removed from home after adjudication, but before disposition.¹ The disparity resulted from a lack of clarity in the court rules. Although it is clear that MCR 3.963 applies in any instance where a child is placed in protective custody, the court rules provide no equivalent procedure for conducting a hearing for a child who is removed from home after adjudication, but before disposition as there is before adjudication (MCR 3.965) or after disposition (MCR 3.974).

The PIR data also revealed inconsistent hearing procedures in cases where the child remained home after authorization of a petition at a preliminary inquiry or preliminary hearing, but where the child is subsequently removed from the home before adjudication.²

¹ Report 6: Dispositional Review Hearing Commenced for Children Removed After Disposition Pursuant to Emergency Removal Hearing [MCR 3.974(C)].

² Report 1: Preliminary Hearing Commenced Within 24 Hours of Removal From Home.

Hearing Procedures

Table 1 below describes appropriate emergency removal procedures when a child is removed from home after a petition is authorized and a preliminary hearing has already been held. Table 2 describes procedures to be followed when a child is ordered removed after a hearing at which placement has been reviewed. Courts should review the applicable court rules for detailed information about the findings required for each hearing type.

Table 1. Emergency Removals
For Indian child, also follow MCR 3.967

Stage of Case	Hearing and Timing	Procedures	Next Event
Original Petition Authorized/ Pre-adjudication, child taken into protective custody under MCR 3.963, amended petition filed requesting removal. MCR 3.974(B)(1).	Unless the court has held a preliminary hearing, conduct Emergency Removal Hearing within 24 hours after child taken into custody. MCR 3.974(C)(3).	Follow requirements of MCR 3.965. MCR 3.974(C)(3)(a).	After Emergency Removal Hearing, proceed under MCR 3.971 or MCR 3.972.
Postadjudication/ Predisposition, child taken into protective custody under MCR 3.963, supplemental petition filed requesting removal. MCR 3.974(B)(2).	Conduct Emergency Removal Hearing within 24 hours after child taken into custody. MCR 3.974(C)(3).	Follow placement provisions in MCR 3.965(C). MCR 3.974(C)(3)(b). Make written findings regarding criteria in MCR 3.965(C)(2). Parent must have opportunity to state why child should not be removed or why child should be returned home. MCR 3.974(C)(3)(b).	After Emergency Removal Hearing, conduct an Initial Dispositional Hearing within 28 days after out-of-home placement. MCR 3.974(D)(1).
Postdisposition, child taken into protective custody under MCR 3.963, supplemental petition filed requesting removal. MCR 3.974(B)(2).	Conduct Emergency Removal Hearing within 24 hours after child taken into custody. MCR 3.974(C)(3).	Follow placement provisions in MCR 3.965(C). MCR 3.974(C)(3)(b). Make written findings regarding criteria in MCR 3.965(C)(2). Parent must have opportunity to state why child should not be removed or why child should be returned home. MCR 3.974(C)(3)(b).	After Emergency Removal Hearing, conduct Dispositional Review Hearing within 14 days after out-of-home placement. MCR 3.974(D)(2). Dispositional Review Hearing may be combined with removal hearing for Indian child under MCR 3.967.

Table 2. Removals After Hearing to Review or Change Placement

For Indian child, also follow MCR 3.967

Removal Type	Stage of Case	Hearing Held	Procedures
Change of Placement. MCR 3.974(A)(3).	Progress Review Hearing within 182 days from date petition was authorized and no later than 91 days after that for the first year following adjudication. MCR 3.974(A).	Progress Review Hearing. MCR 3.974(A)(2) and (3). If parents are not present, an Emergency Removal Hearing is required under MCR 3.974(C). MCR 3.974(A)(3).	If parents are present AND court follows placement provisions in MCR 3.965(C), court may order placement. MCR 3.974(A)(3).
Removal After Placement Review Hearing. MCR 3.977(A)(2)	Any stage of case where party has filed motion for placement review under MCR 3.966(A).	Placement Review Hearing. MCR 3.966(A)(1).	Follow placement procedures in MCR 3.965(B) and (C). MCR 3.966(A)(1). If disposition is not completed, the court shall conduct a dispositional hearing in accordance with MCR 3.973. MCR 3.966(A)(2).

Frequently Asked Questions

Q: What if the court learns of reasons why the child should be removed during a hearing other than a placement review or progress review hearing? Is an additional removal hearing required prior to placement?

A: It depends. If the parents are present AND the court has followed the placement procedures listed in MCR 3.965(C), the court may order placement. If the parents are not present at the hearing OR the court has not followed MCR 3.965(C), the court may order the child taken into protective custody pending an emergency removal hearing under the conditions listed in MCR 3.963(B)(1). MCR 3.974(C)(1). After the child is taken into protective custody, the court must conduct an emergency removal hearing. MCR 3.974(C)(3).

Q: What if the original petition was authorized at a preliminary inquiry but removal is requested prior to adjudication? Does the court conduct a preliminary hearing or an emergency removal hearing?

A: In that instance, the court would conduct a preliminary hearing because it has never held one on the original petition requesting removal. If the court had authorized the original petition at a preliminary hearing under MCR 3.965, the court would conduct an emergency removal hearing, following the placement procedures outlined in MCR 3.965. Multiple preliminary hearings should not be held.

Q: How will these changes impact PIR reporting?

A: They should improve accuracy of data for reports 1 and 6 because the courts will be entering data for these removal scenarios in a consistent and standardized manner. SCAO will not be collecting information regarding each court's compliance with the additional timelines provided in the amended rules; however, it is recommended that case management system providers make output reports for these additional timelines available to allow courts to actively monitor cases. Relevant output reports include tracking cases where an emergency removal hearing was conducted within 24 hours of removal under MCR 3.974(C)(3) and tracking cases where a follow-up dispositional hearing is conducted under MCR 3.974(D).

If you have any questions, please feel free to contact me at latuszekj@courts.mi.gov or 517-373-2451.